

13 APR 1979

MEMORANDUM FOR: Deputy Comptroller

FROM: James H. McDonald
Director of Logistics

SUBJECT: Implementation of Section 15(k) of the
Small Business Act, as amended: Office
of Small and Disadvantaged Business
Utilization

- REFERENCES:
- (a) OFPP Policy Letter 791, dtd Mar 7, 1979, same subject (OL 9 1056)
 - (b) S.2259, Small Business Procurement Expansion and Simplification Act of 1977
 - (c) Memo to OLC, dtd 16 Feb 78, fm C/PMS/OL, subject: S.2259, Small Business Procurement Expansion and Simplification Act of 1977 (OL 8 0677)
 - (d) Ltr to Hon. Gaylord Nelson, Chairman, Select Committee on Small Business, (undated and not sent) fm Frank Carlucci
 - (e) Memo to [redacted] OGC, dtd 5 Jun 78, fm [redacted], subject: S.2259, the "Small Business Procurement Expansion and Simplification Act" (OLC 78-0808/2)
 - (f) MFR, dtd 14 Jun 78, fm [redacted] subject: S.2259, the "Small Business Procurement Expansion and Simplification Act"
 - (g) HR 12056, dtd Apr 12, 1978, Small Business Government Contracting Reform Act of 1978 (OL 8 2952)

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1. On 20 March 1979, the reference (a) policy letter was forwarded to this Office under cover of your note which suggested that the policy letter is not applicable to CIA and that a response to OFPP similar to that provided on OMB Circular A-76 might be applicable. We have reviewed our

OL 9 1056a

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recent correspondence on small business and find there has been a rash of correspondence and legislative action over the past several months, all culminating in Public Law 95-507 and reference (a).

2. A number of references are listed above, with copies attached hereto for your file, and more importantly to assist you in making a decision as to what the response should be to OFPP on reference (a). You will note that this Office commented on reference (b) via the reference (c) memo. In that commentary we noted a number of problems which we felt would result if the proposed legislation became law. Based on the comments in reference (c), the reference (d) memo was prepared by Mr. [] for the signature of Mr. Carlucci. In reference (e) [] in the Office of General Counsel (OGC), wrote to [], also a member of OGC, and asked for advice, pointing out that the proposed letter raised a number of arguments regarding the specific manner in which the bill would impact CIA. He went on to say that since ". . . we do not now operate within the parameter of the Small Business Act, why should we (be) worried about a bill that would simply make changes to that Act? If it is question of not operating according to the Small Business Act for reasons that would not comfortably be justifiable, then we run the risk of having what might be some hard questions put to us when the Congress receives this letter." In reference (f), [] who works with [] in OGC, stated that it was his opinion that the Small Business Act (SBA) does apply to CIA and went on to say that the Office of Logistics was attempting to comply with SBA provisions insofar as they are consonant with Agency security procedures. The question of whether the Agency should offer comments on the Act was left for Agency policy makers to decide.

3. We believe that the correspondence trail just described was concluded with a decision to leave well enough alone and not to go into Congress with a long list of exceptions to an Act which was already difficult for CIA to comply with.

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4. As will be noted in a review of the reference (a) policy letter, a substantial interface with SBA personnel is required. This is not a new requirement and it is fairly routine in other non-sensitive agencies for SBA representatives to be in-place, working closely with in-house procurement personnel, and reviewing agency procurements for possible award to small business firms. While we have had occasional interface with small business, we have never agreed to have SBA personnel review any of our contracts, awards, bidder's list, or to have personnel resident in CIA facilities. We are not alone in this, as during recent discussions with NSA we found that they maintain a similar posture. Small business law would take away individual executive agency authority to make final determination on procurements where SBA and heads of agencies fail to agree. In such case, OFPP would arbitrate between the parties. There are these, and numerous other areas, which result in substantial third party privity to CIA contracts which has been withheld in accordance with the Director's authority to protect sources and methods. Budget information is involved, as is methods of contracting, names of contractors, unique payment procedures, etc. This third party privity is not available to General Accounting Office and we feel should not be made available to SBA.

5. Specifically with regard to the reference (a) policy letter, we think, even if the problems of third party privity and our Director's statutory requirements to protect sources and methods could be resolved, the establishment of an office to be known as the "Office of Small and Disadvantaged Business Utilization" would be counter-productive to mission requirements and, as a further layer of review and approval, would create delay in our procurement process. Also, and perhaps more importantly, in a time of minimal availability of assets for performance of Agency mission, we believe that the potential gain in the area of small and disadvantaged business utilization would not warrant the organizational structure that is proposed. We regularly review lists of minority bidders that are provided by the State of Virginia, by OFPP and others, and find that the majority of these contractors are in service areas. Most of our high dollar procurements are in either advanced technology areas or in the production of sophisticated hardware. At one time we estimated that the potential for awards to minority business, on the basis of direct Agency contracting, approximated [redacted] While we have no regularly

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AT scheduled structured interface with SBA. We note that 26 percent of our procurement dollars are expended with small business firms. We note that this number compares favorably with or exceeds that of other Government agencies. The reference (a) letter refers to a Director of Small and Disadvantaged Business Utilization reporting to the head of the Agency or his deputy, which presumably would be Mr. Carlucci. It goes on to state that he will be a full-time employee whose full-time function would be the supervision of the new office, and that he will have supervisory authority over personnel at headquarters and in the field of the Agency when such personnel are performing duties for which the Office of Small and Disadvantaged Business Utilization has responsibility. It should be noted that our entire staff of professional procurement personnel approximates [] and this includes our Procurement Management Staff which counts [] procurement officers. STA To establish an elaborate superstructure within the Agency for small business matters is patently ridiculous.

6. In summary, it is our recommendation that the Agency continue to handle its procurement of services and supplies in accordance with existing procedure and practice. We have already begun in-house programs, subject to staffing and security constraints, to expand on minority contractor participation. If it is management's decision instead to go with the letter of OFPP Policy Letter No. 79-1, then further work will be necessary to develop information necessary for budget submission to Office of Management and Budget (OMB) with regard to additional necessary staffing levels.

7. We feel that directives, such as reference (a), are workable in large agencies with less sensitive missions. They are difficult, if not impossible, in small agencies or agencies with sensitive mission requirements. We have attached hereto a proposed memo to OFPP which has been prepared, per your suggestion, in the same way that the memo on A-76 was handled. Management may wish to handle this only with OMB, and more specifically with our examiner, and not reply directly to OFPP on this matter. As one final note, you should know that this Office briefed the Administrator for OFPP (then The Honorable Hugh E. Witt) fully on our Agency procurement organization, including policy in areas of possible non-compliance with various Federal procurement laws on 24 February 1976. A copy of our confirming letter to Mr. Witt, regarding that meeting, is available for your review at any time.

Signed: James H. McDonald
James H. McDonald

☐ UNCLASSIFIED ☐ INTERNAL ☐ CONFIDENTIAL ☐ SECRET

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ROUTING AND RECORD SHEET

SUBJECT: (Optional) Implementation of Section 15(k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization

FROM: James H. McDonald
Director of Logistics

EXTENSION

NO.

OL 9 1056a

DATE

13 APR 1978

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Deputy Director for Administration
7D18 Headquarters

2.

3. Deputy Comptroller
4E06 Headquarters

4.

5.

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In all of our discussions in the covering memo addressed to you as well as in the letter prepared for OFPP, you should be mindful of the fact that we have addressed ourselves only to Agency-funded contracts and not to any of the National Programs.

Signed: James H. McDonald

James H. McDonald

COMPT

79-0348



Washington, D.C. 20505

Executive Registry

79-3849/A

17 MAY 1979

Mr. James D. Currie
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Currie:

The Central Intelligence Agency (CIA) has reviewed OFPP Policy Letter No. 79-1, on implementation of Section 15 (k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization, dated March 7, 1979.

Largely because of the Director of Central Intelligence's statutory responsibility to protect against the disclosure of intelligence sources and intelligence methods -- 50 U.S.C.A. 403(d)(3) (Section 102 of the National Security Act of 1947), the CIA has developed unique methods of handling its procurement requirements. In many cases the products delivered under CIA contracts are classified because they involve intelligence collection methods. In many other cases while neither the products nor services delivered are in themselves sensitive, the contractual association between CIA and the contractor must be classified. As an example of the latter, commercially available, off-the-shelf equipment to be utilized in a foreign country can be traced back to CIA through serial numbers, shipping documents, invoices, and maintenance agreements if the contractor were known to be providing equipment to CIA. In order to protect against this, we classify the relationship between the contracting parties.

The necessity for CIA's unique procurement procedures has been accepted by cognizant oversight bodies, has been an established part of our internal regulations since our very beginning, and has been reviewed and accepted by various Congressional committees with a need-to-know. Funding for these types of procurements is considered to be "... for objects of a confidential, extraordinary, or emergency nature ..." as defined in Section 8(b) of our CIA Act (50 U.S.C.A. 403j). No third party privity is permitted on such transactions.

Because of the statutory authorities and responsibilities levied upon the DCI and the resultant fact that no third party privity is available for CIA procurement actions, CIA has never formally implemented

a Small Business Act program. It does not conduct interagency liaison for procurement activities relating to small and disadvantaged business. It has no personnel who have as their sole responsibility the handling of small business matters; it does not conduct outreach, liaison, source listings, or seminars for small business, and does not have an Office of Small and Disadvantaged Business Utilization. While these various assets for execution of procurement from small and disadvantaged businesses are not existent within CIA, I hasten to add that CIA is committed to the spirit of small and disadvantaged business legislation and has many activities in process. Examples include liaison with the Office of Federal Contract Compliance to assure that contractors receiving contracts in excess of \$1 million are in compliance with equal employment opportunity legislation, inclusion in all of our contracts of mandatory contract clauses relating either to small or minority business, distribution to our centralized procurement division of available source lists of minority contractors, and maintenance of records on contracts with small or disadvantaged contractors. In addition to these activities we have participated in various meetings, such as the seminar sponsored by the Joint Economic Committee of the Congress on Measuring Progress in Female and Minority Federal Contracting in 1977.

CIA's total procurement budget (classified) is small as is our complement of procurement personnel. Without the organizational structure required by the aforementioned policy letter, we placed 37 percent of our procurement actions and 26 percent of our procurement dollars with small business in Fiscal Year 1978. We believe this performance compares favorably with other agencies. Our records of contracting with minority business are currently being updated, but I believe the results will not be as favorable in that area as for small business. I have directed that additional effort be devoted to this area.

In conclusion, CIA will continue what I believe is an excellent record of contracting with small business and will strive for increased contract placement with minority business. While I support fully the policies of the Administration on small and disadvantaged business, CIA will not be able to formally implement the portions of P.L. 95-907 discussed in OFPP Policy Letter No. 79-1.

Sincerely,

/s/ Frank C. Carlucci

Frank C. Carlucci

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